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File No. O Saranjams 146

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Subject:-

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P-16/B

File No. O Saranjams 146

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227-A

C O N T E N T S.

Legal Department, File No. O.Saranjam/1946.

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DM
7/1).

Rule 6 of the Saranjam Rules provides that no saranjam can be capable of sub-division. Consequently a saranjam is impartible. But whether a saranjam is a grant of the soil or of revenue only depends upon the terms of the grant. Where a saranjam is a grant of revenue only and the grantee was in possession of the village before the saranjam grant, obviously there can be no objection to holding that the lands in the village are partible, since rule 6 of the Saranjam Rules can have no application to it. In the present case the civil courts have held that the saranjam grant was of revenue only. Consequently no valid objection can be taken to the partition and alienation of lands in the village.

2. Although the circumstances in this case are similar to these in the case where Government issued G.R.(P.&.S.D.) No.821, dated 8-5-1936 they are however distinguishable, The grant in the present case was settled by Government under G.L.PD.No.5399 dated 21st November 1862 (P.D.Vol.8 of 1862 p. 28) while the grant in the other case was directed by the Commissioner, S.D. under his letter no. 4907 dated the 15th December 1864 to be continued to the shirke in accordance with the decrees passed by the civil court in 1822 and has not been adjudged by any court as a grant of revenue. Consequently the petitioner Sardar Bahorji Kanoji Raje Shirke cannot validly contend that the G.R.(P.&.S.D.) No.821 dated 8th May 1936, should be applied also to the present case The view taken by the Commissioner that the petitioner's request deserves no consideration is correct.

Sd.

o.o.

Remembrancer of Legal Affairs

U.R. to P and S.D.No.1361, dated the 18th Feb.1946.

VGP. 18-5-56.

At present there are three Saranjamdars in the Saranjam, namely,

(1) Master Sheshagirirao.

He has 8 annas share.
He is a minor and his estate is under Government management.

(2) Sardar L.N.Heblikar.
He has four annas share.

(3) Mr. K.V. Heblikar.
He has also four annas share

This saranjam includes 200 mars of Kadim, Patilki, Kulkarniki and Nadkari lands. These lands have been divided among the three Saranjamdars, but their actual possession is with the sub-sharers.

The lands in question were formerly held to be watan lands, but those pertaining to the charer of Mr. K.V.Heblikar and Master Sheshagiri were transferred from the watan to saranjam category in pursuance of the orders issued in G.R.P. and S.D. No.923, dated 2nd August 1944 and G.R.P.& S.D. No923 Date. 7th Sept. 1945. No order transferring the lands that had come to the share of Sardar L.N. Heblikar from the category of watan to saranjam has so far been issued.

There were three sub-sharers in the four anna share in the saranjam that had been resumed and regranted to Mr. K.V. Heblikar on the death of his father in pursuance of the orders issued in G.R. P. and S.D.No. 923 dated 2nd August 1944. These three sub-sharers were in possession of part of the two hundred mars of lands mentioned above. These lands in their possession were removed from the category of watan, formally resumed and regranted along with the rest of the saranjam in pursuance of the Privy Council ruling in Laxmanrao vs. Shrinivas Ganpo (51 Bom. 839) and R.L.A's opinion No. 4465 dated 26th June 1944. At the same time it was decided that the persons in actual possession should not be disturbed (vide para 4 of G.R., P.AND S.D. No.923 dated 8th February 1944).

(a) Memorial of Mr. K.V. Heblikar.

Laxmibai one of the three sub-sharers in the four anna share of Mr. K.V. Heblikar died some time ago, leaving behind one Shrinivasrao who she had adopted. He has inherited the lands held by her.

Mr. K.V. Heblikar has requested Government to resume these lands and restore them to him(the Saranjamdar of his branch) contending that the adoption of Shrinivasrao who was an outsider to the Saranjam family was illegal.

The view of the Commissioner, S.D., on this point is that "the alienation of the lands to the junior branch having been recognised, Government need not concern itself with further alienation so longas the lands are held to form part of the Heblikar Saranjam and the Sarnaikdar's family is not extinct." The first question therefore for R.L.A's consideration is whether this view is correct.

It is the Saranjamdar and not the Government who can challenge an alienation or an adoption made by a pot-Inamdar The reason is that a pot-Inamdar derives his title from the Inamdar himself and is not brought into existence by the Government. These lands therefore cannot at this stage be resumed and regranted to Mr. K.V. Heblikar. The view taken by the Commissioner S.D. in this matter appears to be correct.

(b) The Memorial of Sardar L.N. Heblikar.

He has requested that the lands which are in the possession of his bhaubands and nadgirs should be resumed and given in his possession. This cannot be done as these lands along with the rest of the Saranjam pertaining to his branch has already been formally resumed on the death of the previous holder and formally resumed to him.. There is no provision in the Saranjam Rules entitling Government to resume themagain and hand them over to him at this state.,

The lands in the hands of the nadgiris on the authority of the Privy Council ruling in Laxmanrao vs. Shrinivas Lingo (51 Bom 830) and the Bombay High Court decisions in second Appeals No. 586, 592 and 1937 could be removed from the category of watan and placed in that of saranjam. That being so, the nadgirs have hardly any cause of action against Government.

(e) Memorial of Balkrishnarao Ramrao.

Ramrao a member of Saranjamdar's family, it appears held 9 S. Hos. out of 50 mars of lands that had fallen to the share of Sardar L.N.Reblikar and subsequently alienated them to an outsider. He dies some time ago. His son Balkrishna has requested Government to resume these lands, declare them to be saranjam lands and regrant them to him. This is a question of further alienation by Ramrao and may be taken up by the Saranjamdar. Government cannot resume these lands at this stage. It is apparently not necessary for Government to take any other action in the matter.

P.N.H. 26/3/46.

O.C.

Remembrancer of Legal Affairs.

U.R. to P.&.S.D. No. 2306, dated the 27th March 1946.

VGP. 19-6-56

7 · Office of the R.L.A.

In his opinion No. 1351 dated 18/2/1946 the R.L.A. opined:

> "Whether a saranjam is a grant of the soil or of revenue only depends upon the terms of the grant. Where a saranj -am grant, of revenue only and the grantee was in possession of the village before the sarankam grant, obviously there can be no objection to holding that the lands in the village are partible, since rule 6 of the Saranjam Rules can have no application to it. In the present case the civil courts have held that the saranjam grant was of revenue only. Consequently no valid objection can be taken to the partition and alienation of lands in the village."

The Chief Secretary in his note p- 268 ante observes:

> "What is the practical effect of this ruling? What in fact is the real meaning of the 'saranjam' in rule 6 of the Saranjam Rules? It must have some definite meaning. What is it ? According to the R.L.A. it means a saranjam only in certain circumstances as regards impartibility

The R.L.A. is requested to clarify the position.

"Saranjam" as defined in Wilsons Glossary means "temporary assignment of revenue from villages or lands for the support of or for personal military service usually for the life of the grantee; also grants made to persons appointed to civil offices of the state to enable them to maintain their dignity and a grants of charitable purposes. These were neither transferable nor hereditary and were held at the pleasure of the soveriegn." This definition of "Saranjam" was adopted by the Privy Council in Secretaty of state vs. Girjabai (29 B.L.R. 1508). A grant of Saranjam may be either of soil and the whole revenue derived from it or a grant of the royal share of the revenue only; and there is no presumption either a way and the nature of the grant is to be determined according to the facts of each case (see Secretary of State Vs. Laximibai 25 Bom. L.R. 527 P.C.) In the present case the Civil Courts have held that the Kudra Saranjam is of the royal

share of revenue and not of the soil and the division of lands was not objectionable. Under rule 6 of the Saranjam Rules no Saranjam Rules can be capable of sub-division. Consequently objection can be taken under that rule to the sub-division of the royal share of revenue constituting the Saranjam but not to sub-division of lands in the village. The practical effect of the R.L.A!s ruling is that since the Kutra Saranjam in the present case is the grant of the royal share of revenue only and that share has not been sub-divided there is no contravention of rule 6 of the Saranjam Rules. As stated above a Saranjam may be either of the royal share of revenue or of the soil. If it is of the royal share of revenue, that share cannot be partible and if it is of the soil of the lands cannot be sub-divided.

Sd.

O.C.

Remembrancer of Legal Affairs.

U.R. to P.&.S.D. No.4025 dated the 29th May 1946.

VGP. 19-6-[illegible]

In G.R. (P.D.) No. 2514 dated 31st March 1900 Government observed:

The property constituting the Shendurni Saranjam is held by the Dikshit family who supplied priests to the Peishwas under a grant anterior to 1751 A.D. The Pargana of Dhakone, which had been temporarily lost, was in 1763-64 remanted to the ancestors of the two branches, who are now in possession of it. The Pargana of Shrndurni was substituted for Dhakone by a grant in 1797-98 A.D. which was made out in the name of the elder branch only. The Estate was at first dealt with by the British as Inam and by family arrangements the division of the proceeds between the two branches continued, the shares being enjoyed apparently according to Hindu law of succession; but owing to long continued quarrels amongst the beneficiaries the Collector of Khandesh in 1836 divided the villages comprising the Estate into two moieties giving one to the senior and the other ex-to the junior branch. The moiety belonging to the senior the eldest member by primogeniture, in whose name the moiety was entered in the Government accounts, being absent, and that moiety has been retained by the junior collateral and his representatives ever since. In 1853 the Estate was decided by the Inam Commission to be a Saranjam and the Honourable Court of Directors approved the decision by the Inam Commission that the Saranjam was continuable in perpetuity (subject to the condition that in default of a male heir of the grantee of 1797-98 A.D. it would lapse), and that subject to that condition the family arangements for the management of the Estate might continue. The Government in 1866 referred the then representative of the elder branch who desired to recovered possession of the share of that branch to the Civil Courts, and in 1874 so far recognised the then existing de facto position as to advance Rs. 60,000 to the representative de facto in order to liquidate debts, although the whole Saranjam still continued to be

entered in the ~~xx~~ name of the senior male heir alone, and finally in 1890 the attempt by the then titular head of the family, and senior Saranjamdar by primogeniture, Narayan Jagannath Dikshit. to recover the management of the moiety of the Estate in the enjoyment of his branch from one of the ~~xxxxxxxxxxxx~~ Collecerals referred to (named Wasudev Vishnu Dikshit) by a suit in the Civil Courts failed on the grounds of limitation.

2. By the death of Narayan Jagannath in 1896 and of Jagannath Narayan, his eldest son on 20th May 1899 Keshav Jagannath Narayan eldest son of Jagannath Narayan now becomes the head of the family, and it therefore devolves on Govern ment to settle under the Rules promulgated with Government Resolution No. 2674 of the 5th May 1898 the terms on which the Saranjam should be continued," and ordered as follows:

"(A) Under Rule 5 the Collector of Khandesh is directed formally to resume the Saranjam on account of the death of Jagannath Narayan Dikshit.

b) Under Rule 2 the Government direct that the Saranjam be formally regranted to Keshav Jagannath Dikshit and that it be entered in his sole name in the accounts of the Collector of Khandesh.

(c) In conformity with the decision of 1855 that the private family arrangement for the management of the Saranjam may continue the Collector of Khandesh should take steps of that moiety of the Estate which was thereunder allotted to his branch of the family. Member of the junior branch of the family whose interests vest in the other moiety will require no further orders at present, but should the Saranjamdar fail in his obligations towards have a valid claim on the Estate for maintenance, proposals for the grant of equitable allowances in accordance with the rules should be submitted for the orders of Government.

Keshav Jagannath the last male holder of the Saranjam, dies on 16/8/1945 without leaving any male issue. The question of resumption and regrant of the Saranjam has-

has now arisen. The Commissioner, C.D. inpara 9 of his endorsement at p. 191 proposes as follows:-

"No doubt Government can resume under rule 5 of the Saranjam rules the whole Saranjam including the moiety in the possession of Sardar G.Y. Dixit and make it over to the next holder as a fresh grant, unencumberred by any debts but the rule also gives discretion to Government while regranting the Saranjam to impose such charges as Government may deem fit, as a special case. In the case of the Bagni Saranjam in the Satara District Government have recognised the payment of Rs. 1242/- per annum and the possession of 23 Survey Nos. out of the Saranjam property with Mr. V.B. Mantri, a member from the junior branch not descended from the first British grantee and his heirs as a special charge under rule 5 of the Saranjam Rules and have continued it in that family to this date, vide G.R.P.D.No. 3744 dated 27/3/1908 In the case of the Gajendragad Saranjam Government in their Resolution No. 8969 dated 7/6/1932 formally resumed the Saranjam and regranted it to Bhujangrao Daulatrao Ghorpade and ordered it to be entered in his sole name in the Government accounts and to place the Saranjamdar in possession of the villages of the Saranjamdar. As regards the family arrangement effected in 1897 (i.e. 30 years after the family arrangement in the Dixit family was affected) Government on the recommendation of the Commissioner in their Resolution No. 8969 dated 25/8/1930 recognised the shares in the possession of the three branches including that of the Saranjamdar and directed them to be entered in the Revenue Records as de facto shares in the said estate, and to be continued hereditarily as such as if it were a separate Saranjam estate in accordance with the Saranjam Rules, Sardar G.Y.DIXIT's case is covered by the latest orders of Government in the case of the Gajendragad Saranjam. The Commissioner therefore recommends that for the reasons given in paragraph 1 and 5 of Mr. Seddon's letter dated 26/5/1915 the moiety in the possession of the Junior branch now represented by Sardar G.Y.DIXIT should be consign.

considered as special charge imposed by Government on the Saranjam under Rule 5 of the Saranjam Rules and continued inthe possession of the family of Mr. G.Y. Dixit, so long as the Saranjam grant is continued to the lineal male heirs of the first British grantee."

2. The P.&.S.D. appears inlcined to accent the proposal of the Commissioner and the Chief Secretary has requested the R.L.A. to advise about the sensibility of that proposal. He observed:

"There seems to be two main considerations in the Commissioner's recommendation:-

(1) to recognise the de jure impartibility of the Saranjam.

(2) to alter in practice for its effective partition because of long possession of moieties by branches. The secind x is mostly contraty to spirit to the first and if the second is to be accepted it seems being orders on long possession. I am not happy about this position."

3. The view taken by the Chief Secretary is, strictly speaking correct. Rule 6 by the Saranjam Rules in unqualified terms provides that no saranjam can be capable of sub-division. To recognise the de jure impartibility of the saranjam and at the same time alter for its effective partition by the imposition of a charge on the saranjam ~~and it xx ka xx xx xx

his opinion No. 956 dated 4th August 1899, the R.L.A. observed as follows:

"(4) "I think there is no legal objection to the proposal made in this question. Though it is opposed to rule 5 and 6 of those promulgated under Government Resolution No. 2674 dated 5th May 1898 still it is no doubt open to -Government in their discretion not to enforce them to their full extent in any particular case and the Civil Courts could not interfere, if the regrant to the new Saranjamdar were expressly restricted in the manner proposed.

(5) The means of enforcing payment in the case contemplated is open to Government by action under rule 9 of those promulgated by Government Resolution No. 2674 dated 5th May 1898. The Saranjam can be attached, its administration placed inthe hands of the Collector and the shares fixed paid over to the entitled theyto as has for instance, been done in the case of the Belha Saranjam. This is in effect the procedure proposed in the last paragraph of His Excellacy the Governor's minute of 20th December last. The sharers would have the means of enforcing payment by approaching Government, or possibly, by having recourse to the Civil Courts, as a suit for the recovery of their shares, as fixed by Government would not, I think be barred by the Pensions Act, 1871."

It is clear from that opinion of the R.L.A. that although, rule 6 of the Saranjam Rules prohibits subdivision of a Saranjam it is open to Government to relax the rule if justice, equity and good conscience would in any case demand it; for as observed by Stone C.J. in Civil Reference No. 2 of 1945 (relating to the Gajan dragad Saranjam) Saranjam Rules cannot exhaust the General power or prevent Government from making a decision or determination referent al to a particular Saranjam without altering the rules with regard to all of them.. In the circumstances, there is no legal objection to acceptin g the proposal of the Commissione

Sd.

Remembrancer of Legal Affairs.

J.R. to R.T.S.D. No 1045 dated the 30th may 1946

Opinion of the R.L.A.

A of Chief Secretary's note :- In his opinion No. 1361 dated 18-2-1946 the R.L.A. has not stated that "because [illegible] lands were alienated before the Saranjam Rules came into force and because the land revenue has not been made partible rule 6 of the Saranjam Rules does not apply. What the [illegible] said was that "where a Saranjam is a grant of revenue only and the grantee was in possession of the village before the Saranjam grant, obviously there can be no objection to holding that the lands in the village are partible, since rule 6 of the Saranjam Rules can have no application to it." Rule 6 of the Saranjam Rules can apply only to Saranjams and if the Saranjam grant be one of land revenue only and not of soil, it is inconceivable how rule 6 can be invoked to prevent the sub-division of lands. In the present case the civil courts have held that the Saranjam grant was of revenue only. Consequently no valid objection can be taken to the partition and alienation of lands in the village. The persons in possession of lands by partition or alienation would be liable to pay their share of revenue to the Saranjamdar the right to receive which can neither be sub-divided nor alienated.

B of Chief Secretary's note:- In his opinion No. 1361 dated 18-2-1946 the R.L.A. observed.

> "Although the circumstances in this case are similar to those in the case where Government issued Government Resolution (Political and Services Department) No. 821 dated 8-5-1936 they are however distinguishable. The grant in the present case was settled by Government under G.L.R.D. No. 5399 dated 21st November 1862 (P.D.Vol. 8 of 1862 p.281). While the grant in the other case was directed by the Commissioner S.D. under his letter No. 4907 dated the 15th December 1864 to be continued to the Shirke in accordance with the decrees passed by the civil court in 1822 and has not been adjudged by any Court as a grant of revenue."

It is apparent that the similarity between the two cases was not lost sight of by the R.L.A. A decree of the civil Court has got to be respected. In the present case the Civil Courts have definitely held that it is a grant of revenue only and consequently the grant can no longer be considered one of soil. Further in view of the recent decision of the Bombay

High Court in Second Appeal No. 597 of 1943 the Government Resolution (Political and Services Department) No. 821 dated 8-5-1936 will if appears have to be recognised. The High Court has held that the grant to the Shirke family in Colaba district is heritable, partible and alienable and not a Saranjam. Government was a party to the litigation and the decision of the High Court will be binding onit. The petitioner's request is grounded on the Government Resolution (Political and Services Department) No. 821 dated 8-5-1936. Consequently Government may review the whole position before arriving at any decision in the present case.

C of Chief Secretary's note:- In para 6(8to 9) of his letter at p. 257 the Collector observed :-

"The petitioner should have got point decided by preferring an appeal to higher courts but he has not done so. Besides the civil court decree have not sanctioned the partition of the Saranjam property (i.e. revenue of the village) but of the land and Khoti taxim (estate)."

The Chief Secretary considers that there is no sense in this unless the Civil's order related to matters purely within the province of the Civil Court and outside anything to the contrary in the Saranjam rules. It is within the province of the civil Court to decide whether a grant is of revenue only or of soil and consequently what was decided by the civil courts in the present case was within the jurisdiction of those courts.

D. of Chief Secretary's note:- The view taken by Political and Services Department at page 232 is correct.

Sd.

e.c.

Remembrancer of Legal Affairs.

U.R. to P.&.S.D.No. 9141 dated the 16th December 1946.

VGP. 19-6-56.